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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 95321-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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LIBBY HAINES-MARCHEL  
ROCK ISLAND CHRONICS, LLC,  
dba CHRONICS  
Appellant/Petitioner,

v.

WASHINGTON STATE LIQUOR & CANNABIS BOARD,  
Respondent.

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**APPELLANT'S REPLY TO ANSWER**

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## **I. REVIEW SHOULD BE GRANTED**

### **A. This Review Is Not Moot And Has Standing**

This issue was not brought up in the lower court. Although Chronics has five years to file reinstatement, last day being Sept. 13, 2021, Chronics has reinstated itself. When reinstatement occurs it's as if dissolution has never occurred. *Burke v. Hill, 190 Wn. App. 897, 361 P.3d 195 (2015)*. See Appendix A.

### **B. Chronics Does Not Attempt To Raise New Issues For Review**

Chronics' discrimination issue is pursuant to RCW 49.60.010 is a clerical error and a product of oversight that RCW 49.60.030 was in the petition for review. It is clear by both parties that the issue is not one of color or gender raised through the course of this entire appeal process. We ask that issue E be dropped for consideration of this courts review.

### **C. WAC 314-55-035 As Applied Places A Direct And Substantial Burden On The Fundamental Rights Of Marriage**

Strict scrutiny is the proper standard of review. Upon granting review Chronics without doubt will show that the regulation in question is unsupported by a sufficiently important state interest tailored to meet the Boards goal as applied to petitioner. The regulation as applied is subject to strict scrutiny and not the rational basis test the Court of Appeals came to conclude by relying on *Bremerton v. Widell, 146 Wn. 2d 561 (2000)*.



*Widell*, is a case that is a misapplication of the facts and how the correct legal standard is to apply to the issues requested for this courts review. Chronics, can show that as a result of *Widell's* application conflicts with two United States Supreme Court cases. *Washington v. Glucksberg*, 521 U.S. 701, 721, 117 S.Ct. 2258, 117 S.Ct. 230 2d 772 (1997), and *Zablocki v. Redhail*, 434 U.S. 374, 388, 98 S.Ct. 673, 54 L.Ed 2d 618 (1978)

Also, Chronics can show that *Levinson v. Horse Racing Commission*, 48 Wn. App. 822 (1987), is clearly relevant as it applies to petitioner's case. *Levinson*, is not wholly distinguishable just because the regulation was very sweeping, whereas, WAC 314-55-035 & -040 only create a temporary criminal history period on whether to grant or deny a license. Rather, there were other key factors that played a role in deciding *Levinson*, such as, " the husband had no financial interest or control over the license in wake of the courts examination in reversing the commission's decision to deny the license." *Id. at 827*

Interestingly, it was that factor which lead to the change of their regulation to allow a person within the marital relationship to rebut the presumption with satisfactory evidence that the disqualified person has no financial interest with the horse. A regulation, which does not abridge the fundamental right to remain married nor the freedom of personal choice in

matters of marriage. *Zablocki* 434 U.S. at 385 (citing *Cleveland v. Board of Education v. Lafluer*, 441 U.S. 632, 639-40, 39 L.Ed 2d 52, 94 S.ct. 791 (1974)). See Appendix B

The questions before this court significantly relate to issues of public importance that should be determined by the Supreme Court. **RAP 13.4 (4)**. This court is asked to grant review if the same type of solution as a result from the Levinson decision can be achieved with a contractual agreement within the marriage without the marijuana industry being compromised.

#### **D. A Contractual Agreement Within The Marital Relationship Should Be Binding On the Board**

It's important to note, the Court of Appeals should've reached this question, rather, the court turned its focus to the contract itself. The Court of Appeals held the agreement was not a mutually binding agreement supported by consideration. *Rock Island Chronics, 1 Wn. App. 2d at 740-41*.

The issue that the agreement lacked consideration wasn't a material issue of fact in dispute. The record identifies Libby as having sole ownership. If, it lacked consideration, Chronics, was never given the opportunity to show mutual mistake that both parties intentions were

identical at the time of the written contract but failed to express that intention. *In Re Marriage of Schweitzer, 132 Wn.2d 318, 328 (1997)*.

However, if the consideration is not lacking! Then the Court of Appeals erred in subtracting from, modifying and contradicting the terms of a fully integrated written contract, i.e., one which is intended as a final expression of the terms of the agreement signed by Libby and Brock. *Schweitzer, 132 Wn.2d at 327 RCW 26.16.120* is a statutory right within the marriage. The Board recognizes that unique function but that its function does not allow Libby to remain as the sole individual who has passed background checks per **RCW 69.50.331 (1) (a)** in order to receive her license.

**E. As Applied WAC 314-55-035 Violates Applicant's Right To Pursue A Marijuana License**

The question before this court is an issue of first impression regarding our marijuana application laws. The Court of appeals decision conflicts with the "liberty" concepts of being free from unreasonable governmental interference in pursuit of a marijuana license under *Green v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 3 L.Ed. 2d 1377 (1959)*.

The Court of Appeals decision conflicts with *Schwartz v. Board of Examiners, 353 U.S. 232, 238-39, 1 L.Ed 2d 796, 77 S.Ct. 752 (1957)*.

The regulation is not based on one's fitness or capacity to operate a



marijuana business with in the law and is invidiously discriminative based on an applicant's marital status, in pursuit of the license.

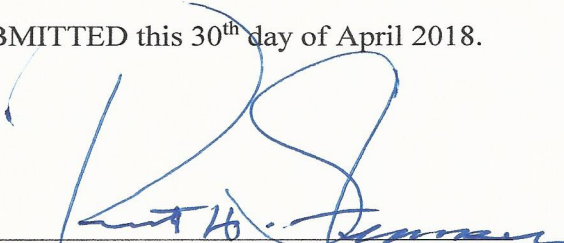
The Court of Appeals decision conflicts with *Conn v. Gabbert*, 526 U.S. 286, 291-92, 119 S.Ct. 1292, 143 L.Ed. 2d 399 (1999). As applied, the regulation bars any ownership as an entrepreneur within the industry as a result of her marital status.

## II. CONCLUSION

Using a criminal point system does maintain the integrity of the industry. Having access to the books and records is also a counter measure. But, the regulation in question as applied to one's marital rights must be narrowly and not broadly tailored to meet that goal.

It would have a chilling effect to uphold the denial without this courts review, particularly issues which are of first impression and of public importance when the lower courts have erred. Review should be granted.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April 2018.



ROBERT H. STEVENSON WSBA #519  
Attorney for Appellant/Petitioner

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**UBI #**

603397627

**Status**

Active

**Expiration Date**

📅 **4/30/2019**

**Period of Duration**

PERPETUAL

**Business Type**

WA LIMITED LIABILITY COMPANY

**Date of Incorporation**

4/28/2014

**State of Incorporation**

WASHINGTON

**Registered Agent**

LIBBY HAINES-MARCHEL  
3126 SW RAYMOND ST  
SEATTLE, WA 98126

**Governing Persons**

LIBBY HAINES-MARCHEL — GOVERNOR

Close

## APPENDIX A

## **WAC 260-40-160**

### **Horse owned or managed by disqualified person.**

(1) A horse may not be entered or start in any race, if owned in whole or in part, or if under the management, directly or indirectly, of a disqualified person.

(2) An entry from a disqualified person or for a disqualified horse must be deemed void and any fees paid must be paid to the winner.

(3) A horse is ineligible to start in a race when it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person. In such cases, it is presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse. The presumption may be rebutted upon presenting satisfactory evidence to the board of stewards that the disqualified person has no financial interest in the horse, and is not involved in managing the horse.

(4) If a horse is sold to a disqualified person, the horse's racing engagements will be void effective the date of the sale.

[Statutory Authority: RCW **67.16.020** and **67.16.040**. WSR 07-07-010, § 260-40-160, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW **67.16.020**. WSR 04-07-076, § 260-40-160, filed 3/15/04, effective 4/15/04; Rules of racing, §§ 110, 111, 112, filed 4/21/61.]

## **APPENDIX B**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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DECLARATION OF SERVICE

LIBBY HAINES-MARCHEL  
ROCK ISLAND CHRONICS, LLC,  
dba CHRONICS

Appellant/Petitioner,

No. 95321-0

v.

WASHINGTON STATE LIQUOR  
& CANNABIS BOARD

Respondent.

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I, LIBBY HAINES-MARCHEL, declare that on April 30, 2018 I mailed a copy of APPELLANT'S REPLY BRIEF including Declaration of Service to Gregory J. Rosen, Senior Counsel Attorney General and Rose Weston, Assistant Attorney General of Washington State P.O. Box 40100, Olympia, WA 98504 by U.S. Mail.

I, LIBBY HAINES-MARCHEL, declare I electronically submitted APPELLANT'S REPLY BRIEF including Declaration of Service to The Supreme Court of Washington State.

Respectfully Submitted on this 30<sup>th</sup> day of April 2018.

  
LIBBY HAINES-MARCHEL



**ROCK ISLAND CHRONICS, LLC**

**April 30, 2018 - 2:08 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 95321-0  
**Appellate Court Case Title:** Libby Haines-Marchel, et al., v. Washington State Liquor & Cannabis Board

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